



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2018-0631; FRL-9990-32-Region 4]

Air Plan Approval; Tennessee; NO_x SIP Call and CAIR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to conditionally approve a portion of a State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC) with a letter dated February 27, 2017, to establish a SIP-approved state control program to comply with the obligations of the Nitrogen Oxides (NO_x) SIP Call with respect to certain sources. EPA is also taking final action to fully approve the remaining portion of the same Tennessee SIP revision to remove the SIP-approved portions of the State's Clean Air Interstate Rule (CAIR) Program rules from the Tennessee SIP. In addition, EPA is also fully approving a revision to the Tennessee SIP submitted with a letter dated April 3, 2018, to remove regulations related to a previous NO_x trading program.

DATES: This rule will be effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2018-0631. All documents in the docket are listed on the www.regulations.gov

web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Madolyn Sanchez, Air Regulatory Management Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Sanchez can be reached by telephone at (404) 562-9644 or via electronic mail at sanchez.madolyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Under Clean Air Act (CAA or Act) section 110(a)(2)(D)(i)(I), which EPA has traditionally termed the good neighbor provision, states are required to address the interstate transport of air pollution. Specifically, the good neighbor provision requires that each state's implementation plan contain adequate provisions to prohibit air pollutant emissions from within

the state that significantly contribute to nonattainment of the national ambient air quality standards (NAAQS), or that interfere with maintenance of the NAAQS, in any other state.

In October 1998 (63 FR 57356), EPA finalized the “Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone” – commonly called the “NOx SIP Call.” The NOx SIP Call addressed the good neighbor provision for the 1979 1-hour ozone NAAQS and was designed to mitigate the impact of transported NOx emissions, one of the precursors of ozone.¹ The rule originally required 22 states – including Tennessee – and the District of Columbia to amend their SIPs to reduce NOx emissions that contribute to ozone nonattainment in downwind states. EPA developed the NOx Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the NOx SIP Call. The NOx Budget Trading Program allowed certain types of sources to participate in a regional NOx cap and trade program: generally electric generating units (EGUs) greater than 25 megawatts (MW); and industrial non-electric generating units, such as boilers and turbines, with a rated heat input greater than 250 million British thermal units per hour (MMBtu/hr), referred to as “large non-EGUs.”² On January 22, 2004, EPA approved into the Tennessee SIP the State’s NOx Budget Trading Program rule.³ The NOx Budget Trading Program was implemented from 2003 to 2008, and in 2009 it was effectively replaced by the ozone season NOx program under CAIR.

¹ See 63 FR 57356 (October 27, 1998). As originally promulgated, the NOx SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but EPA subsequently stayed the rule’s provisions with respect to that standard. 40 CFR 51.121(q).

² The NOx SIP Call also identified potential emissions reductions from other non-EGUs, including cement kilns and stationary internal combustion (IC) engines.

³ See 69 FR 3015 (January 22, 2004).

On May 12, 2005 (70 FR 25162), EPA promulgated CAIR to address transported emissions that would significantly contribute to downwind states' nonattainment or interfere with maintenance of the 1997 ozone and fine particulate matter (PM_{2.5}) NAAQS. CAIR required SIP revisions in 28 states – including Tennessee – and the District of Columbia to reduce emissions of sulfur dioxide (SO₂) and/or NO_x, precursors of PM_{2.5} (SO₂ and NO_x) and ozone (NO_x). Under CAIR, EPA developed separate cap-and-trade programs for annual NO_x, ozone season NO_x, and annual SO₂ emissions. On April 28, 2006 (71 FR 25328), EPA also promulgated federal implementation plans (FIPs) requiring the EGUs greater than 25 MW in each affected state, but not large non-EGUs, to participate in the CAIR trading programs. An affected state could comply with the requirements of CAIR either by remaining under the FIP, which applied only to EGUs, or by submitting a CAIR SIP revision that achieved the required emission reductions from EGUs and/or other types of sources. States had the further option to remain subject to the CAIR FIP generally, but also adopt “abbreviated” CAIR SIP provisions that made certain modifications to the trading programs by allocating allowances among covered units, allowing units to opt-in to the trading programs, or expanding applicability of the CAIR ozone season NO_x trading program to the non-EGUs that formerly participated in the NO_x Budget Trading Program under the NO_x SIP Call.

On August 20, 2007, EPA approved into the Tennessee SIP an abbreviated CAIR SIP revision with allowance allocation and opt-in provisions.⁴ On November 25, 2009, EPA

⁴ See 72 FR 46388 (August 20, 2007).

approved into the Tennessee SIP a further abbreviated CAIR SIP revision expanding applicability of the CAIR ozone season NOx trading program to NOx SIP Call non-EGUs.⁵

EPA discontinued administration of the NOx Budget Trading Program in 2009 upon the start of the CAIR trading programs. The NOx SIP Call requirements continued to apply, however, and EGUs that formerly participated in the NOx Budget Trading Program in almost all states continued to meet their NOx SIP Call requirements under the generally more stringent requirements of the CAIR ozone season trading program. States needed to assess their NOx SIP Call requirements and take other regulatory action as necessary to ensure that their obligations for the large non-EGUs continued to be met either through submission of a CAIR SIP or other NOx regulation. EPA has implementing regulations for the NOx SIP Call at 40 CFR 51.121.

On December 23, 2008, CAIR was remanded to EPA by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *North Carolina v. EPA*, 531 F.3d 896 (2008), *modified on rehearing*, 550 F.3d 1176. This ruling allowed CAIR to remain in effect until a new interstate transport rule consistent with the Court's opinion was developed. While EPA worked on developing a new rule to address the interstate transport of air pollution, the CAIR program continued to be implemented with the NOx annual and ozone season programs beginning in 2009 and the SO₂ annual program beginning in 2010.

EPA issued the Cross-State Air Pollution Rule (CSAPR) in July 2011 to replace CAIR⁶ and address the requirements of the good neighbor provision for the 1997 Annual PM_{2.5} NAAQS, the 2006 24-hour PM_{2.5} NAAQS, and the 1997 8-hour Ozone NAAQS. As amended (including

⁵ See 74 FR 61535 (November 25, 2009).

⁶ Implementation of CAIR was formally sunset upon the implementation of CSAPR, which – because of extended litigation – was delayed until 2015. See 79 FR 71663 (December 3, 2014) and 81 FR 13275 (March 14, 2016).

by the 2016 CSAPR Update, which addressed good neighbor requirements for the 2008 8-hour Ozone NAAQS), CSAPR currently requires 27 Eastern states – including Tennessee – to limit their statewide emissions of SO₂ and/or NO_x in order to mitigate transported air pollution impacting other states' ability to attain or maintain the previously-listed NAAQS. As a mechanism for achieving compliance with the emissions limitations, CSAPR establishes five federal emissions trading programs: a program for annual NO_x emissions, two geographically separate programs for annual SO₂ emissions, and two geographically separate programs for ozone-season NO_x emissions. Currently, through FIP provisions established in CSAPR and subsequent SIP revisions from various states, each affected state's units are required to participate in up to three of the five CSAPR trading programs.

The CSAPR trading programs for annual NO_x, annual SO₂, and ozone season NO_x are applicable to the large EGUs (i.e., EGUs that are greater than 25 MW) in each covered state, and a state may also expand trading program applicability to include certain smaller EGUs. Under CSAPR as originally promulgated, states could not expand the applicability under CSAPR's ozone season NO_x trading program to include non-EGUs that formerly participated in the NO_x Budget Trading Program. Starting in 2017, with implementation of the CSAPR Update, states once again have this option, as they did under CAIR.

With respect to Tennessee, large EGUs in Tennessee are currently subject to three of the CSAPR trading programs, including one addressing ozone season NO_x emissions. Tennessee has not chosen to expand CSAPR applicability to small EGUs or non-EGUs.

In a notice of proposed rulemaking (NPRM) published on December 17, 2018 (83 FR 64497), EPA proposed to conditionally approve the portion of a February 27, 2017, SIP revision

to add Tennessee Comprehensive Rules and Regulation (TCRR) 1200-03-27-.12 - “NO_x SIP Call Requirements for Stationary Boilers and Combustion Turbines” (except paragraph 1200-03-27-.12(7)(b)4.) to the Tennessee SIP,⁷ which establishes a state control program to comply with the obligations of the NO_x SIP Call, as clarified in a July 24, 2018, letter.⁸ EPA stated that approval of this portion of the February 27, 2017, SIP revision would be conditioned on Tennessee submitting by December 31, 2019, a complete SIP revision amending the rule’s applicability provisions to cover certain potential new units as discussed in section II.A. of the NPRM, consistent with the State’s commitment in letters to EPA dated May 11, 2018, and October 11, 2018.⁹ In addition, EPA proposed to fully approve the portion of the February 27, 2017, SIP submission to remove the SIP-approved portions of the State’s CAIR trading program rules from the Tennessee SIP at TCRR 1200-03-14-.04 - “CAIR SO₂ Annual Trading Program,” 1200-03-27-.10 - “CAIR NO_x Annual Trading Program,” and 1200-03-27-.11 - “CAIR NO_x Ozone Season Trading Program.” Further, EPA proposed to fully approve an April 3, 2018, SIP revision to remove a previous NO_x SIP Call trading program at TCRR 1200-03-27-.06 - “NO_x Budget Trading Program for State Implementation Plans.” The details of Tennessee’s

⁷ TCRR 1200-03-27-.12(7)(b) specifies additional reporting and recordkeeping requirements related to each facility, which require the facility to report its emissions and to generally maintain records for at least five years. The February 27, 2018 SIP submission contains paragraph 1200-3-27-.12(7)(b)4 that requires sources to report to the Tennessee Division of Air Pollution Control, in addition to EPA. However, as reporting to EPA continues to be required for sources, Tennessee withdrew 1200-3-27-.12(7)(b)4 from the February 27, 2018 submission in a July 24, 2018 letter (hereinafter “the July 24, 2018 Letter”). As a result, EPA is not acting on the withdrawn paragraph.

⁸ The July 24, 2018 Letter clarifies that, consistent with TCRR 1200-03-27-.12(6)(a), the State interprets TCRR 1200-03-27-.12(6)(d) to require that any adjusted allowance allocation amounts for existing affected units under 1200-03-27-.12(6)(d) be submitted to EPA for approval as a SIP revision to be incorporated into the SIP prior to allocation. EPA’s action on Tennessee’s SIP is therefore based on the clarification of the State’s interpretation of this provision as explained in the July 24, 2018 Letter.

⁹ On May 11, 2018, Tennessee submitted a commitment letter requesting conditional approval of the 2017 NO_x SIP Call Rule and committing to provide a SIP revision to EPA by April 30, 2019, that addresses the deficiency discussed in Section II.A. of the NPRM by revising the definition of “affected unit” to remove the unqualified exclusion for any unit that serves a generator that produces power for sale. In a letter dated October 11, 2018, Tennessee revised the commitment date from April 30, 2019, to December 31, 2019.

submissions and the rationale for EPA's actions are explained in the NPRM. Comments on the proposed rulemaking were due on or before January 16, 2019. EPA did not receive any comments on the proposed action. EPA is now taking final action consistent with its proposal.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of TCRR 1200-03-27-.12 - "NO_x SIP Call Requirements for Stationary Boilers and Combustion Turbines" (with the exception of paragraph 1200-3-27-.12(7)(b)4.), state effective February 19, 2017, which establishes a state control program to comply with the obligations of the NO_x SIP Call. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹⁰

III. Final Action

As described above and in the NPRM, EPA is conditionally approving the portion of the February 27, 2017, SIP revision to add TCRR 1200-03-27-.12 - "NO_x SIP Call Requirements for

¹⁰ See 62 FR 27968 (May 22, 1997).

Stationary Boilers and Combustion Turbines” (except paragraph 1200-03-27-.12(7)(b)4.) to the Tennessee SIP, as clarified in the July 24, 2018 Letter. Approval of this portion of the February 27, 2017, SIP revision is conditioned on Tennessee submitting by December 31, 2019, a complete SIP revision amending the rule’s applicability provisions to cover certain potential new units as discussed in section II.A. of the NPRM, consistent with the State’s commitment. In addition, EPA is approving the portion of the February 27, 2017 SIP submission to remove the SIP-approved portions of the State’s CAIR trading program rules from the Tennessee SIP at TCRR 1200-03-14-.04 - “CAIR SO₂ Annual Trading Program,” 1200-03-27-.10 - “CAIR NO_x Annual Trading Program,” and 1200-03-27-.11 - “CAIR NO_x Ozone Season Trading Program.” Further, EPA is approving the April 3, 2018, SIP revision to remove a previous NO_x SIP Call trading program at TCRR 1200-03-27-.06 - “NO_x Budget Trading Program for State Implementation Plans.”

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. These actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 20, 2019.

Mary S. Walker

Acting Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

2. Section 52.2219 is added to read as follows:

§ 52.2219 Conditional approval.

Tennessee submitted a SIP revision on February 27, 2017, to add TCRR 1200-03-27-.12 - “NO_x SIP Call Requirements for Stationary Boilers and Combustion Turbines” (except paragraph 1200-03-27-.12(7)(b)4.) to the Tennessee SIP, which establishes a state control program to comply with the obligations of the NO_x SIP Call. In letters dated May 11, 2018 and October 11, 2018, Tennessee committed to submit, by December 31, 2019, a complete SIP revision amending the rule’s applicability provisions to cover certain potential new units. EPA conditionally approved the portion of the February 27, 2017, SIP revision to add TCRR 1200-03-27-.12 to the SIP in an action published in the **Federal Register** on [Insert date of publication in the **Federal Register**] based on this commitment. If Tennessee fails to meet its commitment by December 31, 2019, the conditional approval will become a disapproval and EPA will issue a notice to that effect.

3. Section 52.2220(c) Table 1 is amended:

- a. Under CHAPTER 1200-3-14 by removing the entry for “Section 1200-3-14-.04”, and
- b. Under CHAPTER 1200-3-27 by:
 - i. Removing the entries for “Section 1200-3-27-.06”, “Section 1200-3-27-.10”, and

“Section 1200-3-27-.11”; and

ii. Adding an entry in numerical order for “Section 1200-3-27-.12”.

The revisions and additions read as follows:

§ 52.2220 Identification of plan.

(c) * * *

TABLE 1—EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
CHAPTER 1200-3-27 NITROGEN OXIDES				
**	**	*	*	*
Section 1200-3-27-.12	NO _x SIP Call Requirements for Stationary Boilers and Combustion Turbines	2/19/17	[Insert date of publication in <u>Federal Register</u>] [Insert Federal Register citation]	With the exception of paragraph 1200-3-27-.12(7)(b)4. The remainder of Section 1200-3-27-.12 is conditionally approved through December 31, 2019.
**	**	*	*	*

[FR Doc. 2019-03956 Filed: 3/5/2019 8:45 am; Publication Date: 3/6/2019]